

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Ruman et al. Art Unit 3761
Appeal No. 2007-2292
Serial No. 10/038,796
Filed December 31, 2001
Confirmation No. 2941
For ABSORBENT ARTICLE WITH IMPROVED FASTENING SYSTEM AND
METHOD OF FASTENING THEREOF
Examiner Karin M. Reichle

September 26, 2007

REQUEST FOR REHEARING UNDER 37 C.F.R. §41.52

This is a request for rehearing under 37 C.F.R. §41.52 from the Board of Patent Appeals and Interferences affirmation of the Examiner's rejection made in the Decision on Appeal decided July 27, 2007.

The Board Misapprehended Kuen et al.'s Disclosure

The Board affirmed the Examiner's rejection of claim 25 based on its agreement with the Examiner's misapprehension and reliance on the disclosure of U.S. Patent No. 5,386,595 (Kuen et al.). In particular, the Board misapprehended the disclosure by Kuen et al. at column 14, lines 48-58 that the referenced Shelby Elastics material and U.S. Patent No. 5,125,246 disclose 1) a loop material that is stretchable and 2) a substrate, to which the loop material is secured, that is also stretchable as recited in claim 25 (as well as claim 30). See page 4, last paragraph of the Decision on Appeal. This passage of Kuen et al. does not disclose these features and, as a result of this misapprehension the Board incorrectly affirmed the Examiner's rejection of claim 25 (as well as claims 27 and 30) of the present application as being anticipated by Kuen et al.

The Board's finding is factually incorrect in that, as previously asserted by the Appellants, Kuen et al. do not

disclose both a stretchable loop material and a stretchable substrate to which the stretchable loop material is secured as recited in appellants' claims. The disclosure in Kuen et al. relied on by the Board and the Examiner (Col. 14, lines 48-58), and more particularly the entire paragraph containing this passage (i.e., lines 42-58) describes two different possible embodiments: 1) a looped face material 78 is separate from and secured to a strap member 76 material and 2) a loop material is formed integral with, i.e., by being woven or knitted with an elastic material.

The strap members 76 have a looped face 78 and an opposite face 79. The looped face 78 of each strap member 76 is formed of a loop material, such as by attaching a loop material to an elastic strap material. More preferably, the looped face 78 is separately stitched (**embodiment 1**) or permanently and continuously formed lock-stitched into one side of a woven or knit elastic material as it is woven or knitted (**embodiment 2**). One particular material which has been found suitable as a strap member 76 is a knit material identified as S-284 and manufactured by Shelby Elastics, Incorporated, of Shelby, N. C. (**embodiment 1**) A knitted elastic lock pile fabric is disclosed in U.S. Pat. No. 5,125,246 to Shytles. (**embodiment 2**) Alternately, the strap members may have opposite faces that both comprise a loop material (not shown). Col. 14, lines 42-58. Emphasis Added.

Of the two embodiments, only the first embodiment teaches a loop material 78 separate from and secured to a substrate, i.e., to strap member 76 such as by being stitched thereto (the other embodiment merely describes a loop material without a separate substrate to which the loop material is secured). The cited passage clearly refers only to the strap member 76 in teaching that a particular material that has been found suitable "as a strap member 76" is the Shelby Elastics material. There is no disclosure, in this passage or

elsewhere in Kuen et al., which teaches that the loop material (and not just the strap member 76) is also stretchable. Rather, the Examiner and the Board respectfully erred in making such a characterization.

Accordingly, the passage of Kuen et al. relied on by the Board and the Examiner fails to disclose a stretchable loop material secured to a stretchable substrate as recited in claim 25. Thus, Kuen et al. must fail to disclose contracting the stretchable loop material and contracting the stretchable substrate as recited in appellant's claim 25, and allowing the retraction of the loop material and the retraction of the substrate as recited in appellant's claim 30.

Appellants respectfully request withdrawal of the Board's Decision and a finding that claims 17-19, 25, 27, 30, and 31 of the present application are unanticipated by and patentable over Kuen et al.

Respectfully submitted,

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